Bill No. D-84-11-02

SPECIAL ORDINANCE NO. S-144-84

AN ORDINANCE AUTHORIZING THE ISSUANCE OF $500,000 AGGREGATE PRINCIPAL AMOUNT OF ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE BONDS SERIES A (FORT WAYNE CLUTCH EXCHANGE PROJECT) OF THE CITY OF FORT WAYNE, INDIANA, THE PROCEEDS OF WHICH SHALL BE LOANED TO FORT WAYNE CLUTCH EXCHANGE, AN INDIANA GENERAL PARTNERSHIP, TO ASSIST IN THE FINANCING OF AN ECONOMIC DEVELOPMENT FACILITY; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS; AUTHORIZING A LOAN AGREEMENT, TRUST INDENTURE, BOND PURCHASE AGREEMENT AND ASSIGNMENTS APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE SUCH BONDS; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

WHEREAS, the City of Fort Wayne, Indiana (the "Issuer"), is a municipal corporation and political subdivision in and of the State of Indiana, and by virtue of the laws of the State of Indiana, including Indiana Code, Title 36, Article 7, Chapter 12, is authorized and empowered among other things (a) to make a loan for the acquisition, construction, equipping and installation of an economic development facility within the boundaries of the Issuer, (b) to issue and sell its revenue bonds to provide moneys for such loan, and (c) to enact this Bond Legislation and execute and deliver the assignments and agreements hereinafter identified; and

WHEREAS, this Common Council has determined and does hereby confirm that the acquisition, construction, equipping and installation of the Project, as hereinafter defined, will promote the welfare of the people of the Issuer, create or preserve jobs and employment opportunities, and assist in the development of economic, manufacturing and industrial activities to the benefit of the people of the Issuer, and that the Issuer, by assisting with the financing of the Project through the issuance of revenue bonds in the aggregate principal amount of $500,000, will be acting in a manner consistent with and in furtherance of the provisions of Indiana Code, Title 36, Article 7, Chapter 12; and

WHEREAS, the Fort Wayne Economic Development Commission has determined that the acquisition, construction, equipping and installation of the Project will not have an adverse competitive effect on any similar facility already constructed or operating in or about Fort Wayne, Indiana;

BE IT ORDAINED by the Common Council of the City of Fort Wayne, Indiana:

Section 1. Definitions. In addition to the words and terms defined in the recitals and elsewhere in this Bond Legislation and in the Indenture, the words and terms defined in this Section shall have the meanings herein specified unless the context or use clearly indicates another or different meaning or intent. Those words and terms not expressly defined herein and used herein with initial capitalization where rules of grammar do not otherwise require capitalization shall have the meanings assigned to them in the Agreement, as hereinafter defined.

"ACT" means Indiana Code, Title 36, Article 7, Chapter 12 and amendments and supplements thereto such as are hereunder adopted.

"AGREEMENT" or "LOAN AGREEMENT" means the Loan Agreement dated as of December 1, 1984, between the Issuer and the Company, and any permitted amendments or supplements thereto.

"BONDS" means the Bonds authorized in Section 3 or 4 hereof, registered in the name of the Holder as to principal and interest, including any Bond issued in exchange therefor as provided in the Indenture; and, initially, one (1) fully registered Bond, numbered RA-I in the original principal amount of $500,000.

"BOND FUND" means the Bond principal, premium and interest fund created by Section 9 hereof.

"BONDHOLDER" or "HOLDER" means, initially, the Original Purchasers, and any subsequent person in whose name any Bond is registered; provided that, solely as used in the definitions of "Determination of Taxability" and "Event of Taxability", the term "Bondholder" also includes the owner of an undivided participation interest in any Bond.

"BOND LEGISLATION" means this ordinance.

"BOND PURCHASE AGREEMENT" means the Bond Purchase Agreement dated as of December 1, 1984, among the Issuer, the Trustee, the Company and the Original Purchasers, and any permitted amendments or supplements thereto.

"BOND SERVICE CHARGES" for any time period means the principal, including any amortization or redemption requirements, interest, and redemption premium, if any, required to be paid by the Issuer on the Bonds for such time period. Any "late charge" and any payment required to be made on the Bonds with interest at the Interest Rate for Advances shall also constitute a Bond Service Charge.

"CODE" means the Internal Revenue Code of 1954, as amended, and regulations promulgated thereunder.

"COMPANY" means Fort Wayne Clutch Exchange, an Indiana General Partnership, and its successors and assigns, including any surviving, resulting or transferee entity as provided in Section 6.7 of the Agreement.

"COMPLETION DATE" means the date of completion of the acquisition, installation, equipping and construction of the Project as that date shall be certified as provided in Section 3.5 of the Agreement.

"CONSTRUCTION FUND" means the fund created by Section 7 hereof.

"DETERMINATION OF TAXABILITY" means (i) the filing by the Company or any other person or entity of any statement, supplemental statement or other tax schedule, return or document (whether pursuant to Treasury Regulations §1.103-10(b)(2)(vi)(c) or otherwise) which discloses that an Event of Taxability has occurred, or (ii) the final assertation by the Internal Revenue Service or any agent thereof to the effect that interest on the Bonds is includable in the gross income for federal income tax purposes of any Holder (other than a Holder who is a "substantial user" of the Project or a "related person", as those terms are used in Section 103 of the Code) or (iii) the final adoption of legislation or regulations or a final determination, decision, decree or ruling of any judicial or administrative authority which has the effect of requiring interest on the Bonds to be included in the gross income for Federal income tax purposes of any Holder (other than a Holder who is a "substantial user" of the Project or a "related person", as those terms are used in Section 103 of the Code). For purposes of clause (iii) in the preceding sentence, a decision, decree or ruling by any judicial or administrative authority shall be considered final upon the expiration or waiver of all periods for judicial review or appeal, as the case may be.

"ELIGIBLE INVESTMENTS" means (i) any bonds or other direct obligations of the United States of America; (ii) obligations of the

Federal National Mortgage Association or the Government National Mortgage Association; (iii) obligations of the Federal Intermediate Credit Banks; (iv) obligations of Federal Banks for Cooperatives; (v) obligations of Federal Land Banks; (vi) obligations of the Federal Financing Bank; (vii) bank repurchase agreements issued by a Federal Reserve member bank, including the Trustee, fully secured by obligations of any of the kinds specified in clauses (i) through (vi) above; (viii) time deposits, certificates of deposit, documented discount notes secured by stand-by letters of credit, bank reverse repurchase agreements or bankers acceptances of banks or trust companies, including the Trustee, organized under the laws of the United States of America or any state thereof, which have combined capital and earned and unearned surplus of at least $25,000,000 in dollars of the United States of America; (ix) commercial paper or finance company paper which is rated not less than prime-one or A-l or their equivalents by Moody's Investors Service, Inc., or Standard & Poor's Corporation, respectively, or their successors, or both, if rated by both; or (x) obligations, of any state of the United States of America or of any political subdivision or other instrumentality of any such state, which are rated at least "A" or its equivalent by either Moody's Investors Service, Inc., or Standard & Poor's Corporation, or their successors, or both, if rated by both.

"EVENT OF TAXABILITY" means the occurrence of circumstances which a Determination of Taxability shall have found to have occurred, or which shall constitute a Determination of Taxability, and which results in the interest payable on the Bonds becoming includable in the gross income for Federal income tax purposes of any Bondholder (other than a Bondholder who is a "substantial user" of the Project or a "related person" as those terms are used in Section 103 of the Code), such occurrence of circumstances relating to a specific point in time. Without limiting the generality of the foregoing, the incurring of capital expenditures in excess of those permitted under Section 103(b)(6)(D) of the Code, thereby causing any interest payable on the Bond to be includable in the gross income of any Bondholder under the Code, shall constitute an Event of Taxability.

"EXECUTIVE" means the Mayor of the Issuer.

"FINAL MATURITY DATE" means April l, 2005.

"FISCAL OFFICER" means the City Clerk of the Issuer.

"GUARANTY" means the Guaranty Agreement dated as of December 1, 1984, between Francis M. DeMayo, Marlene E. DeMayo, Robert G. DeMayo and Frances H. DeMayo, as Guarantors, and the Trustee, whereby said Guarantors have unconditionally guaranteed to the Trustee payment of the Note in accordance with the terms thereof.

"INDENTURE" means the Trust Indenture dated as of December 1, 1984, between the Issuer and the Trustee, including this Bond Legislation as a part thereof, and any permitted amendments or supplements thereto.

"INTEREST PAYMENT DATE" means the first day of each month commencing June l, 1985, and continuing monthly thereafter.

"INTEREST RATE FOR ADVANCES" means the annual rate of interest which is equal to the rate of interest per annum publicly announced to be the prime rate by Lincoln National Bank and Trust Company of Fort Wayne from time to time, whether or not such Bank shall at times lend to borrowers at lower rates of interest, plus two percent (2%); provided that in no event shall the Interest Rate for Advances exceed the rate permitted by law.

"ISSUING AUTHORITY" means the Common Council of the Issuer.

"LEGAL OFFICER" means either the City Attorney of the Issuer or the Counsel to the Economic Development Commission.

"MORTGAGE" means the Mortgage and Security Agreement dated as of December 1, 1984, whereby the Company has granted to the Trustee, as security for payment of the Note and the Bonds, a mortgage on and security interest in the Project and the Project Site, and any permitted amendments or supplements thereto.

"NOTE" means the Promissory Note, in the form attached as Exhibit C to the Loan Agreement, issued by the Company to the Issuer concurrent with the delivery of the Loan Agreement.

"NOTE PAYMENTS" means any and all payments of principal of and interest, and prepayment premiums or Additional Payments, if any, on the Note.

"ORIGINAL BOND" means one (1) Bond RA-I, in the aggregate principal amount of $500,000.

"ORIGINAL PRINCIPAL SUM" means $500,000, the aggregate original face amount of the Bonds.

"ORIGINAL PURCHASER" means Lincoln National Bank and Trust Company of Fort Wayne, Fort Wayne, Indiana.

"OUTSTANDING BOND" or "BOND OUTSTANDING" or "OUTSTANDING" as applied to the Bonds, means, as of any date, any Bond which has been authenticated and delivered, or is then being delivered, by the Trustee under the Indenture except:

(a) Any Bond surrendered and replaced upon exchange or transfer, or cancelled because of payment or redemption, at or prior to such date;

(b) Any Bond for which sufficient moneys have been deposited with the Trustee for the payment, redemption or purchase for cancellation of, whether upon or prior to the Final Maturity Date or the redemption date of any such Bond, or which is deemed to have been paid and discharged pursuant to the provisions of Section 8.02 of the Indenture; provided that if such Bond is to be redeemed prior to the Final Maturity Date, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee shall have been filed with the Trustee; and

(c) Any Bond in lieu of which another has been authenticated (or payment, when due, of which is made without replacement) under Section 2.04 of the Indenture; and

(d) For the purpose of determining whether the Holders of the requisite principal amount of Bonds have made or concurred in any notice, request, demand, direction, consent, approval, order, waiver, acceptance, appointment or other instrument or communication under or pursuant to this Indenture, Bonds owned by or for the account of the Company or any person owned, controlled by, under common control with or controlling the Company shall be disregarded and deemed to be not outstanding. The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. Beneficial ownership of 5% or more of a class of securities having general voting power to elect a majority of the board of directors of a corporation shall be conclusive evidence of control of such corporation.

"PAYMENT IN FULL OF THE BONDS" means the first date when the Bonds are no longer deemed to be outstanding pursuant to Section 8.02 of the Indenture.

"PERSON" means natural persons, firms, associations, corporations and public bodies.

"PLEDGED RECEIPTS" means (a) the Note Payments, (b) subject to the provisions of Sections 3.04, 4.02 and 8.02 of the Indenture with respect to the Trustee holding moneys for the benefit of any Bondholder, all other moneys received by the Issuer, or the Trustee for the account of the Issuer, in respect of the Agreement or the Project, except certain expense, reimbursement and indemnity payments which are, pursuant to the provisions of the Agreement, to be made by the Company directly to the Issuer or the Trustee, (c) any moneys on deposit in the Construction Fund or the Bond Fund and (d) the income and profit from the investment of any moneys while held in the Construction Fund or the Bond Fund.

"PROJECT" means the Project Site and the real, personal, or real and personal property, including undivided interests or other interests therein, identified in Exhibit A to the Agreement, or acquired, constructed or installed as a replacement or substitution therefor or an addition thereto, or as may result from a revision of the plans and specifications therefor in accordance with the provision of the Loan Agreement or Mortgage.

"PROJECT SITE" means the real estate and interests in real estate constituting the site of and part of the Project, as described in Exhibit B to the Agreement.

"STATE" means the State of Indiana.

"TAXABLE RATE OF INTEREST" means the Interest Rate for Advances.

"TRUSTEE" means the Trustee at the time acting as such under the Indenture, originally Lincoln National Bank and Trust Company, as Trustee, and any successor Trustee as determined or designated under or pursuant to the Indenture.

Any reference herein to the Issuer, the Issuing Authority, or to any officer or official thereof, shall include those succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing such functions. Any reference herein to any other person or entity shall include his or its respective successors and assigns. Any reference to a section or provision of the Code, the Act or to a section, provision or chapter of the Indiana Code shall include such section or provision or chapter as from time to time amended, modified, revised, supplemented, or superseded; provided, however, that no such change shall alter the obligation to pay the Bond Service Charges in the amounts and manner, at the times, and from the sources provided in this Bond Legislation and the Indenture, except as otherwise herein permitted, or shall be deemed applicable by reason of this provision if such change would in any way constitute an impairment of the rights of the Issuer or the Company under the Agreement.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, any pronoun shall be deemed to cover all genders, and the terms "herein", "hereof", "hereby", "hereunder", and similar terms, mean this Bond Legislation and the Indenture and not solely the portion hereof in which any such word is used.

Section 2. Determination of Issuing Authority. Pursuant to the Act, the Issuing Authority hereby finds and determines that the Project is an "economic development facility" as defined in the Act and that all actions required under the Act to be taken by the Issuer prior to the issuance of the Bonds have been duly authorized and completed.

Section 3. Authorization of Bonds. It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided herein and pursuant to the authority of the Act, the Bonds in the aggregate principal amount of $500,000 for the purpose of financing costs of acquiring, constructing, equipping and installing the Project, including costs incidental thereto and of the financing thereof, all in accordance with the provisions of the Loan Agreement and the Bond Purchase Agreement. The Bonds shall be designated "Economic Development First Mortgage Revenue Bonds Series A (Fort Wayne Clutch Exchange Project)."

Section 4. Additional Bonds. One or more series of Bonds in addition to the Original Bonds (herein referred to as "Additional Bonds") may, with the consent of the Holders of all Bonds then outstanding, be authenticated and delivered from time to time for one or more of the purposes of (i) refunding entirely one or more series of Bonds outstanding hereunder, if such Bonds may otherwise be refunded, (ii) advance refunding entirely one or more series of Bonds outstanding hereunder, regardless of whether such Bonds may otherwise be refunded, if the same is then permitted by law by depositing with the Trustee, in trust for the sole benefit of such series of Bonds, cash or investments (but only to the extent that the full faith and credit of the United States of America are pledged to the timely payment thereof) in a principal amount which will, together with the income or increment to accrue thereon, be sufficient to pay and redeem (when redeemable) and discharge such series of Bonds at or before their respective maturity dates, and (iii) financing the cost or estimated cost of completing the Project or of acquiring, equipping, constructing and/or renovating additional improvements to the Project, and, in each case, obtaining additional funds to pay the costs to be incurred in connection with such Additional Bonds, to establish reserves with respect thereto and to pay interest during the estimated construction period of completing the additional improvements, if any. Each series of Additional Bonds issued hereunder shall be equal in aggregate principal amount to the principal amount of the Additional Note being then currently issued.

Prior to the delivery by the Issuer of any of such Additional Bonds, there shall be filed with the Trustee:

1. A supplement to this Indenture executed by the Issuer and the Trustee authorizing the issuance of such Additional Bonds, specifying the terms thereof, pledging and assigning the Additional Note being then currently issued as security therefor and providing for the disposition of the proceeds of the sale thereof.

2. The supplement or amendment to the Loan Agreement and the other instruments, documents, certificates and opinions referred to in Section 5.2 of the Loan Agreement.

3. The Additional Note being then concurrently issued, made payable to the order of the Issuer, duly executed by the Company and endorsed by the Issuer to the order of the Trustee.

4. A copy, duly certified by the Fiscal Officer of the Issuer, of the ordinance theretofore adopted and approved by the Issuer authorizing the execution and delivery of such supplemental indenture and such supplement to the Loan Agreement and the issuance of such Additional Bonds.

5. A Written Request of the Issuer to the Trustee to authenticate and deliver such Additional Bonds.

6. Written consent to the issuance of Additional Bonds by the Holders of all of the Bonds then outstanding.

Any Additional Bonds issued in accordance with the terms of this Section shall be secured by this Indenture and shall be equally and ratably payable from all Notes issued under the Loan Agreement, but such Additional Bonds may bear such date or dates, such interest rate or rates, and with such maturities, redemption dates and premiums as may be agreed upon by the Issuer and the purchaser of such Additional Bonds.

Section 5. Terms of Bonds. The Bonds shall be issued in fully registered form and shall be exchangeable for fully registered Bonds in the manner and on the terms provided in the Indenture, shall be numbered from RA-1 upwards, and shall be in substantially the form set forth therefor in the Indenture.

Bonds shall be in the denominations of $5,000 and any multiple thereof, and shall be of a single maturity of the same series; provided that the Fiscal Officer with the approval of the Trustee may authorize issuance of one or more Bonds representing more than one maturity of the same series with appropriate changes in the form of such a Bond to cover more than one maturity, such approval and authorization to be evidenced as provided in the Indenture.

Each Bond shall be dated as of the date of its delivery or exchange; provided that if at the time of authentication of any Bond interest is in default thereon, such Bond shall be dated as of the date to which interest has been paid, and Bonds initially delivered to the Original Purchaser shall be dated as of December 1, 1984.

The Bonds being initially delivered to Lincoln National Bank and Trust Company of Fort Wayne, as the Original Purchaser, shall be one (1) Bond numbered RA-1 in the original aggregate principal amount of $500,000 with interest thereon (calculated daily on the actual number of days outstanding in advance on the unpaid principal balance on the basis of a 360-day year) at a rate of seventy-five percent (75%) of the rate of interest per annum publicly announced to be the prime rate by Lincoln National Bank and Trust Company of Fort Wayne from time to time, whether or not such Bank shall at times lend to borrowers at lower rates of interest (the "Bond Interest Rate"). Said interest shall be payable in monthly installments commencing on January 1, 1985, and on the first day of each month thereafter, through and including April 1, 2005. Commencing on May 1, 1985, and on the first day of each month thereafter, payments of principal shall be made in the amount of $2,083.33 with the last payment of principal due on April 1, 2005.

All payment provisions herein set forth are subject to the provisions hereinafter set forth with respect to redemption prior to maturity as they may become applicable hereto. Upon full and complete payment as provided herein, the Bonds shall be deemed fully paid and retired upon the making of the final payment provided for herein. Upon any transfer and surrender of said Bond numbered RA-1 in accordance with the provisions of the Indenture, the Issuer shall execute and deliver a new Bond or Bonds in exchange therefor as provided in the Indenture.

The Bonds are subject to optional redemption, in whole or in part, prior to maturity by the Issuer at the direction of the Company on any Interest Payment Date. Any prepayment amount may consist of the entire principal amount of the Bonds then outstanding, or any part thereof, except that if less than the entire amount, then such partial prepayment amount shall be a multiple of $5,000, plus accrued interest to the redemption date. The redemption date in any such event shall be the date set by the Company for prepayment of the Note in accordance with the provisions of such Section 7.1(a) of the Loan Agreement.

The Bonds shall also be callable for redemption in whole or in part, upon occurrence of any of the circumstances which operate to require prepayment of the Note in whole or in part by the Company in accordance with the provisions of Sections 7.1(b) and 7.2 of the Loan Agreement. The redemption date in any of such events shall be the date set by the Company, (or in default thereof, by the Trustee) for

the prepayment of the Note in whole or in part in accordance with the provisions of the Loan Agreement. The redemption price in any of such events shall be 100% of the principal balance of the Bonds to be redeemed on the date of redemption, plus accrued interest to the redemption date; provided that upon any call for redemption of the Bonds due to a Determination of Taxability, the redemption price shall be increased by an amount equal to the difference between (a)(i) the aggregate amount of interest which would have been payable on the Bonds if the interest rate on the Bonds, commencing on the date of the Event of Taxability, had been the Taxable Rate of Interest, plus (ii) any penalties and interest payable by the Holders to any taxing authority as a result of the loss of the tax-exempt status of interest on the Bonds, plus (iii) all attorneys fees and other costs incurred by the Holders in contesting or resisting the loss of the tax-exempt status of interest on the Bonds, and (b) the aggregate amount of interest actually paid on the Bonds from the date of the Event of Taxability to the redemption date.

The obligation of the Issuer to make payments of interest on and/or principal of the Bonds which remains outstanding after any partial redemption shall not be affected by such partial redemption, such partial redemption operating instead to pay and redeem the principal of this Bond at dates earlier than the originally scheduled principal amortization dates, in inverse chronological order.

Notice from the Company to the Trustee that the Note is to be prepaid in whole or in part pursuant to the Agreement shall also constitute direction by the Issuer to the Trustee to shorten the payment schedule and move the final payment date forward, and no separate notice from the Issuer to the Trustee shall be required.

Notice of the call for any redemption of Bonds, identifying by designation, letters, numbers, or other distinguishing marks, the Bonds or portions of Bonds to be redeemed, the redemption price to be paid, the date fixed for redemption and the place or places where the amounts due upon such redemption are payable, shall be given by the Trustee on behalf of the Issuer by mailing a copy of the redemption notice by registered or certified mail at least thirty (30) days prior to the date fixed for redemption to the Holder or Holders thereof at the address shown on the registration books kept by the Trustee; provided, however, that failure to give such notice to any Bondholder by mailing, or any defects in such notice to any Bondholder, shall not affect the validity of the proceedings for the redemption of any of the other Bonds. The Holder or Holders of Bonds may waive any notice of redemption in writing, and in such event, no notice of any kind need be given with respect to the Bonds of such Holder or Holders to be so redeemed.

All Bond Service Charges on Bonds shall be payable by check or draft drawn upon the Trustee and mailed or delivered to the Bondholder at its address as shown on the Bond registration books to be kept by the Trustee; provided however that the final Bond Service Charges shall be payable at the corporate trust office of the Trustee upon presentation and surrender of the Bond at such office. All payments of Bond Service Charges shall be made in lawful money of the United States of America, without deduction for services as paying agent. In addition, upon acceleration of the Bond, the amounts payable upon such acceleration, together with interest thereon at the Interest Rate for Advances from the date of acceleration, shall continue as an obligation of the Issuer until paid. All payments from the Issuer referred to herein shall be payable solely from the Pledged Receipts.

All Bonds shall bear such designation as may be necessary to distinguish them from Bonds of any other series. Subject to provisions of the Bond Legislation, Bonds shall be issued as fully registered Bonds, and may be exchanged as provided in the Indenture. All Bonds shall be negotiable instruments, subject to applicable provisions for registration, and shall express on their faces the purpose for which they are issued and such other statements or legends as may be required by law.

The Bonds shall be executed on behalf of the Issuer by the Executive and by the Fiscal Officer, provided that any or all of such signatures may be facsimiles, and the seal of the Issuer shall be impressed thereon or a facsimile of such seal placed thereon. In case any officer whose signature or a facsimile thereof shall appear on any Bond, shall cease to be such officer before the issuance, authentication or delivery of the Bond, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until after that time.

Section 6. Security for the Bonds. As provided herein, the Bonds shall be payable solely from the Bond Fund and the Pledged Receipts and secured by a pledge of and lien on the Pledged Receipts and the Bond Fund, and shall be further secured by the Mortgage and the Indenture. Neither the Bond Legislation, the Bonds, the Indenture, the Loan Agreement, nor the Bond Purchase Agreement shall represent or constitute a debt or pledge of the faith and credit or the taxing power of the Issuer, and each Bond shall contain on the face thereof a statement to that effect.

Section 7. Sale of Bonds. The Bonds are hereby sold and awarded to the Original Purchaser, in accordance with its offer therefor in the Bond Purchase Agreement, at a purchase price of 100% of the principal amount of the Bonds to be purchased by it, aggregating $500,000, plus accrued interest from the date of the Bonds. The Executive and the Fiscal Officer are authorized and directed to make on behalf of the Issuer the necessary arrangements with the Original Purchaser to establish the date, location, procedure and conditions for the delivery of the Bonds to such Original Purchaser, and to take all steps necessary to effect due execution, authentication and delivery to the Original Purchaser of the Bonds purchased by it under the terms of this Bond Legislation, the Indenture and the Bond Purchase Agreement. It is hereby determined that the price for and the terms of the Bonds, and the sale thereof, all as provided in this Bond Legislation and the Bond Purchase Agreement, are in the best interest of the Issuer and consistent with all legal requirements.

Section 8. Allocation of Proceeds of Bond - Construction Fund. There is hereby created by the Issuer and ordered maintained, as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee, a trust fund in the name of the Issuer to be designated "City of Fort Wayne - Fort Wayne Clutch Exchange Construction Fund." All of the sums from the sale of the Bonds, except accrued interest on the Bonds, shall be deposited in the Construction Fund and disbursed by the Trustee in accordance with the Loan Agreement. The Trustee is authorized and directed to issue its check for each such disbursement. The moneys to the credit of the Construction Fund (including the proceeds from the sale of investments thereof) shall, pending applications thereof as above set forth, be subject to a lien and charge in favor of the Holder.

Section 9. Source of Payment - Bond Fund. As provided in the Agreement, Note Payments, sufficient in time and amount to pay the Bond Service Charges as they come due, are to be paid by the Company directly to the Trustee for the account of the Issuer and deposited in the Bond Fund.

There is hereby created by the Issuer and ordered maintained, as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee, a trust fund to be designated "City of Fort Wayne - Fort Wayne Clutch Exchange Bond Fund." Subject to the provisions of the Mortgage, the Bond Fund and the moneys therein are hereby pledged to and shall be used solely and exclusively for the payment of Bond Service Charges as they fall due at stated maturity or by amortization or redemption, all as provided herein and in the Indenture and the Agreement. Except as otherwise provided in this Bond Legislation or in the Mortgage, there shall be deposited into the Bond Fund, as and when received, all Pledged Receipts.

The Issuer covenants and agrees that, until Payment in Full of the Bonds, it will deposit or cause to be deposited in the Bond Fund Pledged Receipts sufficient in time and amount to pay the Bond Service Charges as the same become due and payable, and to this end the Issuer covenants and agrees that it will diligently and promptly proceed in good faith and use its best efforts to enforce the Agreement and that, should there be an event of default under the Agreement, the Issuer shall fully cooperate with the Trustee and with the Bondholder to fully protect the rights and security of the Bondholder hereunder. Nothing herein shall be construed as requiring the Issuer to use or apply to the payment of Bond Service Charges any funds other than the Bond Fund and the Construction Fund or revenues from any source other than Pledged Receipts.

The Issuer covenants and agrees, whenever the moneys and investments in the Bond Fund (or otherwise held by the Trustee for such purpose) are sufficient in amount to redeem the entire principal amount of the Bonds then outstanding and to pay interest to accrue thereon to the date or dates of such redemption, and any applicable premiums, to take and cause to be taken, upon notification by the Company or the Trustee, the necessary steps to redeem the Bonds on the next succeeding redemption date or dates for which the required notice of call for redemption may be given.

Section 10. Covenants of Issuer. In addition to other covenants of the Issuer in the Bond Legislation and the Indenture, the Issuer further covenants and agrees as follows:

(a) Payment of Bond Service Charges. The Issuer will, solely from the sources herein provided, pay or cause to be paid the Bond Service Charges on the Bonds on the dates, at the places and in the manner provided herein and in the Bonds.

(b) Performance of Covenants, Authority and Actions. The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Bond Legislation, the Agreement, Bond Purchase Agreement, the Indenture and the Bonds, required therein to be observed and performed by the Issuer. The Issuer warrants and covenants that it is, and upon delivery of the Bonds will be, duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds, to execute the Indenture, the Bond Purchase Agreement, the Agreement and the assignment of the Note, and to provide the security for payment of the Bond Service Charges in the manner and to the extent herein and in the Indenture set forth; that all actions on its part for the issuance of the Bonds, and the execution and delivery of the Indenture, the Bond Purchase Agreement, the Agreement and the assignment of the Note, have been or will be duly and effectively taken; and that the Bonds will be valid, binding and enforceable special obligations of the Issuer according to the terms thereof. Each provision of the Bond Legislation, Indenture, the Bond Purchase Agreement, the Agreement and the Bonds is binding upon each such officer of the Issuer as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duties required by such provision.

(c) Pledged Receipts. Except as otherwise provided in the Bond Legislation, Indenture, Bond Purchase Agreement and Agreement, the Issuer will not make any pledge or assignment of or create any lien or encumbrance upon the Construction Fund, the Bond Fund or the Pledged Receipts, other than the pledge and assignment thereof under the Bond Legislation, Indenture and Agreement.

(d) Recordings and Filings. The Issuer will cooperate in causing all necesary financing statements, amendments thereto,

continuation statements and instruments of similar character relating to the pledges and assignments made by the Issuer to secure the Bonds, to be recorded or filed in such manner and in such places as and to the extent required by law in order to fully preserve and protect the security of the Holder and the rights of the Trustee under the Indenture; and in pursuance thereof the Company has covenanted to cause to be delivered to the Trustee certain opinions of counsel, all as set forth in Section 6.9 of the Agreement.

(e) Inspection of Project Books. All books and documents in the Issuer's possession relating to the Project or to the Pledged Receipts shall at all reasonable times be open to inspection by such employees, accountants or other agents of the Trustee as the Trustee may from time to time designate.

(f) Maintenance of Agreement. The Issuer shall do all things and take all actions on its part necessary to comply with the obligations, duties and responsibilities on the part of the Issuer under the Agreement, and will take all actions within its authority to maintain the Agreement in effect in accordance with the terms thereof and to enforce and protect the rights of the Issuer, Trustee and Bondholder thereunder, including actions at law and in equity, as may be appropriate.

(g) Rights under Agreement. The Trustee, in its name or in the name of the Issuer, may, for and on behalf of the Bondholder, enforce all rights of the Issuer and all obligations of the Company under and pursuant to the Agreement, whether or not the Issuer is in default of the pursuit or enforcement of such rights and obligations.

(h) Arbitrage Provisions. The Issuer will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the Bonds are delivered to the Original Purchaser, so that they will not constitute arbitrage bonds under Section 103(c) of the Code and the applicable regulations prescribed under that section. The Fiscal Officer or any other officer having responsibility with respect to the issuance of the Bonds is authorized and directed, alone or in conjunction with any of the foregoing or with any other officer, employee, consultant or agent of the Issuer, or any officer of the Company, and upon receipt of satisfactory indemnities from the Company, to give an appropriate certificate on behalf of the Issuer, for inclusion in the transcript of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to such Section 103(c) and regulations thereunder.

Section 11. Investment of Bond Fund and Construction Fund Money. Moneys in the Bond Fund and the Construction Fund shall be invested and reinvested by the Trustee in any Eligible Investments, in accordance with and subject to any written orders, or oral orders confirmed promptly in writing, of an authorized representative of the Company with respect thereto, provided that investments of moneys in the Bond Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide moneys hereunder to pay Bond Service Charges as they fall due at stated maturity or by amortization or redemption, and that each investment of moneys in the Construction Fund shall in any event mature or be redeemable at the option of the Trustee at such time as may be necessary to make timely payments from such Fund. Subject to any such orders with respect thereto, the Trustee may from time to time sell such investments and reinvest the proceeds therefrom in Eligible Investments maturing or redeemable as aforesaid. Any such investments may be purchased from the Trustee. The Trustee shall sell or redeem investments standing to the credit of the Bond Fund to produce sufficient moneys hereunder at the times required for the purposes of paying Bond Service Charges when due as aforesaid. An investment

made from moneys credited to the Bond Fund or Construction Fund shall constitute part of that respective Fund and such respective Fund shall be credited with all proceeds of sale and income or loss from such investment. The Company has covenanted in the Agreement to restrict the use of the proceeds of the Bonds so that they will not constitute arbitrage bonds under the Code.

Section 12. Authorization of Agreement, Bond Purchase Agreement, Indenture and Assignment. In order to better secure the payment of the Bond Service Charges as the same shall become due and payable, the Executive and the Fiscal Officer are hereby authorized and directed to execute, acknowledge and deliver, on behalf of the Issuer, the Agreement, the Bond Purchase Agreement, the Indenture and the assignment of the Note, in substantially the forms submitted to this Issuing Authority, which are hereby approved, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer as may be permitted by the Act and approved by the Legal Officer and by the persons executing the same. The approval of such changes by the Legal Officer and such members, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of the Agreement, the Bond Purchase Agreement, the Indenture and such assignment by such persons.

The Executive and Fiscal Officer are each hereby separately authorized to take any and all actions and to execute such financing statements, election statement, certificates and other instruments that may be necessary or appropriate in the opinion of the Legal Officer and bond counsel, in order to effect the issuance of the Bonds and the intent of this Bond Legislation. The Fiscal Officer, or other appropriate officer of the Issuer, shall certify a true transcript of all proceedings had with respect to the issuance of the Bonds, along with such information from the records of the Issuer as is necessary to determine the regularity and validity of the issuance of the Bonds.

This Bond Legislation shall constitute a part of the Indenture as therein provided and for all purposes of the Indenture, including, without limitation, application to this Bond Legislation of the provisions in the Indenture relating to amendment, modification and supplementation, and provisions for severability.

Section 13. Effective Date. This Bond Legislation shall take effect and be in force immediately upon its adoption.

Mark C. [illegible]
Councilman

Approved as to form and legality:

John J. Wernet
John J. Wernet, Attorney for the Fort Wayne Economic Development Commission

Dated this 9 day of NOV, 1984

Bruce O. Boxberger
City Atty

BILL NO. S-84-11-02

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS REFERRED AN ORDINANCE AUTHORIZING THE ISSUANCE OF $500,000 AGGREGATE PRINCIPAL AMOUNT OF ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE BONDS SERIES A (FORT WAYNE CLUTCH EXCHANGE PROJECT) OF THE CITY OF FORT WAYNE, INDIANA, THE PROCEEDS OF WHICH SHALL BE LOANED TO FORT WAYNE CLUTCH EXCHANGE, AN INDIANA GENERAL PARTNERHSIP, TO ASSIST IN THE FINANCING OF AN ECONOMIC DEVELOPMENT FACILITY: PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS: AUTHORIZING A LOAN AGREEMENT, TRUST INDENTURE, BOND PURCHASE AGREEMENT AND ASSIGNMENTS APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE SUCH ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

MARK E. GiaQUINTA, CHAIRMAN — Mark E. GiaQuinta

JAMES S. STIER, VICE CHAIRMAN

JANET G. BRADBURY — Janet G. Bradbury

THOMAS C. HENRY

DONALD J. SCHMIDT

CONCURRED IN 11-27-84
SANDRA E. KENNEDY, CITY CLERK

Read the first time in full and on motion by Gee Divita, seconded by Redd, and duly adopted, read the second time by title and referred to the Committee Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock ____.M.,E.S.

DATE: 11-13-84

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third ~~time~~ in full and on motion by Gee Divita, seconded by Stier, and duly adopted, placed on its passage. PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	9				
BRADBURY	✓				
BURNS	✓				
EISBART	✓				
GiaQUINTA	✓				
HENRY	✓				
REDD	✓				
SCHMIDT	✓				
STIER	✓				
TALARICO	✓				

DATE: 11-27-84

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ANNEXATION~~) (~~APPROPRIATION~~) (GENERAL) (SPECIAL) (~~ZONING MAP~~) ORDINANCE (~~RESOLUTION~~) NO. S-144-84 on the 27th day of November, 1984,

ATTEST:

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

(SEAL)

Ray A. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th day of November, 1984, at the hour of 11:30 o'clock A.M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 29th day of November, 1984, at the hour of 11 o'clock A.M.,E.S.T.

WIN MOSES, JR., MAYOR